United States Department of Labor
Employees' Compensation Appeals Board

J.G., Appellant	)	
and	)	**Docket No. 11-1896**
	)	**Issued: April 4, 2012**
GOVERNMENT PRINTING OFFICE, BUREAU OF LABOR STATISTICS, New York, NY, Employer	)	

Appearances:
Robert J. Helbock, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 17, 2011 appellant, through his attorney, filed a timely appeal from the Office of Workers' Compensation Programs (OWCP) merit decision dated March 21, 2011 which denied appellant's claim. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a back injury in the performance of duty.

FACTUAL HISTORY

On February 10, 2010 appellant, then a 51-year-old economic assistant, filed a traumatic injury claim, alleging that on February 9, 2010, while lifting a bag of computer gear, he injured his upper back. He stopped work on February 9, 2010 which was his last day of employment.

[1] 5 U.S.C. §§ 8101-8193.

Appellant came under the treatment of Dr. Joseph Suarez, a Board-certified orthopedic surgeon, from February 18 to March 5, 2010, for pain in the scapula area. Dr. Suarez noted that appellant reported carrying a computer tower and batteries and feeling burning in his upper back near the scapula when he attempted to pick up the computer. He noted mild spasm in the left upper back and diagnosed sprain and strain of the upper back. On February 22, 2010 appellant reported lifting an object at work and experiencing pain in the left upper scapula area. Dr. Suarez noted an essentially normal physical examination and diagnosed cervical radiculopathy. He noted that appellant's job required him to get in and out of a car and to work bending over a computer which caused discomfort. Dr. Suarez opined that appellant was totally disabled. He found appellant was totally disabled.

By letter dated March 15, 2010, OWCP advised appellant of the factual and medical evidence needed to establish his claim. It requested that he submit a comprehensive medical report from his treating physician which included a reasoned explanation as to how the February 9, 2010 incident had contributed to his claimed injury.

Appellant submitted emergency room notes dated February 13, 2010 where he was treated for cervical back pain. He reported lifting a box of computer gear at work and having back pain. A February 18, 2010 cervical spine x-ray revealed no acute fracture or subluxation of the cervical spine and degenerative disc disease C3-6. Appellant was treated by Dr. Margarita Nunez, a physiatrist. In New York worker's compensation forms dated March 18 and 23, 2010, Dr. Nunez noted that appellant was injured on February 9, 2010 and his complaints were consistent with the history of injury and objective findings.

In an April 26, 2010 decision, OWCP denied appellant's claim finding that the medical evidence did not establish that his cervical condition was caused by work factors.

On June 24, 2010 appellant requested reconsideration. In an April 7, 2010 report, Dr. Suarez treated him for cervical spine pain and opined that he was disabled. On May 25, 2010 Dr. Suarez noted that on February 9, 2010 appellant was lifting something at work and "probably hyperextended his cervical spine" which caused irritation and pain. He related that it was "perfectly reasonable for someone when he is lifting to overextend the cervical spine and cause pain and damage to the cervical spine." Dr. Suarez noted that appellant had no prior history of cervical spine problems or injuries before this incident and opined that appellant was totally disabled. He noted that "an incident of lifting can definitely cause damage and problems in the cervical spine."

On July 1, 2010 OWCP denied modification of the April 26, 2010 decision.

On November 29, 2010 appellant requested reconsideration. He submitted a September 20, 2010 report from Dr. Suarez who noted that appellant reported injuring his back on February 9, 2010 while lifting a large box of computer parts weighting 10 to 12 pounds. Appellant noted carrying the box for over one and a half hours by public transportation prior to the actual event of lifting the box that caused pain. He submitted the box to security placing it on a table to be screened and when lifting the box from the table experienced pain in his upper back. Dr. Suarez noted that the fatigue situation developed where appellant was carrying the box over a prolonged period of time and when he lifted the box from the security table he injured his

cervical spine. He noted that appellant had no prior history of cervical spine problems. Dr. Suarez noted that appellant remained totally disabled because of the work injury which was the competent producing cause of appellant's cervical spine problem and his inability to work.

On March 21, 2011 OWCP denied modification of the July 1, 2010 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[2]

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[3] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[4]

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[5] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[6]

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[2] *Gary J. Watling*, 52 ECAB 357 (2001).

[3] *Michael E. Smith*, 50 ECAB 313 (1999).

[4] *Id*.

[5] *Leslie C. Moore*, 52 ECAB 132 (2000).

[6] *Franklin D. Haislah*, 52 ECAB 457 (2001)*; Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

ANALYSIS

Appellant alleged that he sustained a cervical back injury after lifting a box of computer equipment on February 9, 2010. The Board notes that the evidence supports that the incident occurred on February 9, 2010 as alleged. The Board finds, however, that the medical evidence is insufficient to establish that he sustained a cervical injury causally related to the February 9, 2010 work incident. OWCP advised appellant of the medical evidence needed to establish his claim. There is no fully rationalized medical report in which a physician explains how the February 9, 2010 work incident caused or aggravated his claimed condition.

On May 25, 2010 Dr. Suarez noted that on February 9, 2010 appellant was lifting something at work and "probably hyperextended his cervical spine." He stated that "it is perfectly reasonable for someone when he is lifting to overextend the cervical spine and cause pain and damage to the cervical spine." The Board notes that while Dr. Suarez provided some support for causal relationship his analysis is insufficient to establish the claimed cervical condition was caused by the accepted incident. The report lacked a full or accurate history of the lifting incident and at best, provides only speculative support for causal relationship. Dr. Suarez qualified his opinion by noting that lifting "probably" caused injury to the spine. Moreover, he addressed causal relationship in general terms saying it was "perfectly reasonable" for someone to overextend the spine when lifting. Dr. Suarez provided insufficient medical reasoning to support his conclusion on causal relationship. Therefore, his report is insufficient to meet appellant's burden of proof.[7]

In a September 20, 2010 report, Dr. Suarez noted that appellant reported injuring his back on February 9, 2010 while lifting a box of computer parts weighting 10 to 12 pounds. He added to the history that appellant carried the box for over one and a half hours, which caused fatigue. Dr. Suarez opined that fatigue and subsequent lifting of the box caused injury and noted that appellant had no prior cervical spine problems. Again, he did not provide adequate rationale supporting the causal relationship between appellant's cervical condition and lifting the box on February 9, 2010.[8] Dr. Suarez suggested it was a combination of lifting and fatigue that caused appellant injury but he did not fully explain the pathophysiological process by which this occurred. Instead, his primary rationale appears to be that appellant had no cervical problems prior to the lifting incident. The Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to support a causal relationship.[9] The diagnostic studies of record noted degenerative disc disease at C3-6. Dr. Suarez did not address how the lifting incident was competent to aggravate any preexisting condition. His February 18 and 22, 2010, reports give a history of appellant having pain in his upper back when he attempted to pick up the computer but Dr. Suarez did not provide rationale explaining why lifting caused or aggravated a diagnosed condition. Thus, these reports are insufficient to establish the claim.

[7] Medical opinions that are speculative or equivocal in character are of diminished probative value. *D.D.*, 57 ECAB 734 (2006).

[8] *Id.*

[9] *Kimper Lee*, 45 ECAB 565 (1994).

The other reports from Dr. Suarez, including a March 5, 2010 duty status report and an April 7, 2010 report, did not specifically address whether appellant had a diagnosed medical condition causally related to the February 9, 2010 incident.[10] Similarly, emergency room notes from February 13, 2010 noted treatment for cervical back pain. Appellant reported lifting a heavy box of computer gear at work and experiencing back pain. Worker's compensation forms from Dr. Nunez dated March 18 and 23, 2010 noted that appellant was injured on February 9, 2010 and his complaints were consistent with the history of injury and objective findings. However, these reports fail to provide a specific and rationalized opinion as to the causal relationship between appellant's employment and his diagnosed cervical condition.[11] Therefore, these reports are insufficient to establish appellant's claim.

Consequently, the medical evidence is insufficient to establish that the February 9, 2009 incident caused or aggravated a diagnosed medical condition.

On appeal, appellant asserts that his condition is employment related and that reports from Dr. Suarez support his cervical condition was work related. As noted, he has not submitted sufficient medical evidence to establish that the February 9, 2010 incident caused injury.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a cervical condition causally related to his February 9, 2010 employment incident.

[10] *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[11] *See supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the March 21, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 4, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board